

## REMARKS

Reconsideration of the above-identified patent application in view of the amendment above and the remarks below is respectfully requested.

Claim 31 has been canceled in this paper. Claims 1, 3, 13, 25, 26 and 28 have been amended in this paper. No new claims have been added in this paper. Therefore, claims 1-20, 22-30 and 32-39 are pending and under active consideration.

Claims 1, 25 and 28 stand objected to under 37 CFR 1.75(a) "as failing to particularly point out and distinctly claim the subject matter which applicant regards as his invention or discovery." In support of the objection, the Patent Office states the following:

Claim 1 lacks antecedent basis for "the serum and/or plasma" in line 4. The following will be assumed for examination purposes: --~~the~~ the serum and/or plasma--.

Claim 25 recites "a serum" in line 2. It is unclear whether this is intended to be the same as or different from the "serum" required in line 4 of claim 1. The following will be assumed for examination purposes: a the serum--.

Claim 28 lacks antecedent basis for "the handling apparatus" in line 2. The following will be assumed for examination purposes: --~~the~~ a handling apparatus--.

Claim 28 lacks antecedent basis for "the classification" in line 2. The following will be assumed for examination purposes: --~~the~~ a classification--.

Without acquiescing in the propriety of the objection, Applicant has amended claims 1, 25 and 28 in the manner suggested by the Patent Office. Accordingly, the subject objection has been obviated and should be withdrawn.

Claim 31 stands rejected under 35 U.S.C. 102(b) "as being anticipated by Watson et al. (WO 99/28724)."

Without acquiescing in the propriety of the subject rejection, Applicant notes that claim 31 has been canceled. Therefore, the subject rejection is moot and should be withdrawn.

Claims 1, 11, 12, 16, 18, 25, 29, 30, and 32-39 stand rejected under 35 U.S.C. 103(a) “as being unpatentable over the combination of Itsuzaki et al. (US 5,763,265) and Rowe et al. (US 7,126,682).”

Applicant respectfully traverses the subject rejection.

Itsuzaki et al. discloses a method to define the amount of blood serum in a sample in order to extract only blood serum for further analysis (see col. 1, lines 44-50; and col. 1, line 62 through col. 2, line 8). Itsuzaki specifically discloses a method comprising detecting an upper boundary position, as well as a lower boundary position, of the serum components of a blood sample using a visual sensor and determining the amount of serum components from the distance between the upper and lower boundary position and the diameter of the sample container (see col. 1, lines 53 through 63). The seven steps of this method are described in col. 3, line 28 through col. 4, line 11. Only boundary positions are detected. In Fig. 7 and at col. 4, lines 32 through 52, Itsuzaki discloses a method to detect arbitrary color components in the blood serum. Itsuzaki does not disclose a method to detect the quality of the samples in the containers by comparing the region corresponding to the serum with stored color values of reference samples and classified as "clear" or "not clear.”

Rowe et al. only describes the structure and the function of a certain spectrometer. Rowe does not disclose that it is not only preferable, but absolutely sufficient, to detect the quality of the samples in question only by the criteria “clear” or “not clear” in order to efficiently sort out the samples which cannot be analyzed. The selection of these very special criteria is not taught by Rowe since there is only a reference to sample quality as such without specifying the quality criteria.

Therefore, claim 1 is patentable over the combination of Itsuzaki et al. (US 5,763,265) and Rowe et al. Claims 11, 12, 16, 18, 25, 29, 30, 32-39 depend ultimately from claim 1 and, therefore, are also patentable over the applied combination of references.

Accordingly, for at least the above reasons, the subject rejection should be withdrawn.

Claims 2-6, 13, 14, 17, 19 and 28 stand rejected under 35 U.S.C. 103(a) “as being unpatentable over the combination of Itsuzaki et al. and Rowe et al. as applied to claims 1, 11, 12 and 16 above, and further in view of Watson et al.”

Applicant respectfully traverses the subject rejection. Claims 2-6, 13, 14, 17, 19 and 28 depend ultimately from claim 1. Claim 1 is patentable over Itsuzaki et al. and Rowe et al. for at least the reasons given above. Watson fails to cure all of the deficiencies of Itsuzaki et al. and Rowe et al. with respect to claim 1. This is, in part, because Watson only discloses a sample distribution system. The only image analyzing structure 300 is shown in Figs. 8A and 8B. It comprises a digital camera 22, a bar code reader 20 and only one light source 142. This image analyzing structure serves for identification of shape and color of the container’s caps, the bar code labels sticking on the containers and the height of the samples in the containers, but not the quality of the samples. Therefore, based at least on their respective dependencies from claim 1, claims 2-6, 13, 14, 17, 19 and 28 are patentable over the applied combination of references.

Accordingly, for at least the above reasons, the subject rejection should be withdrawn.

Claims 7-9 stand rejected under 35 U.S.C. 103(a) “as being unpatentable over the combination of Itsuzaki et al., Rowe et al. and Watson et al. as applied to claims 6 above, and further in view of Michelotti et al. (US 5,755,335).”

Applicant respectfully traverses the subject rejection. Claims 7-9 depend ultimately from claim 6. Claim 6 is patentable over Itsuzaki et al., Rowe et al. and Watson et al. for at least the reasons given above. Michelotti et al. fails to cure all of the deficiencies of Itsuzaki et al., Rowe et al. and Watson et al. with respect to claim 6. This is, in part, because Michelotti et al. merely discloses a method and apparatus for inspecting a label applied to a container. Michelotti et al. does not disclose a method and apparatus for detecting the quality of a sample. Therefore, based at least on their respective dependencies from claim 6, claims 7-9 are patentable over the applied combination of references.

Accordingly, for at least the above reasons, the subject rejection should be withdrawn.

Claim 10 stands rejected under 35 U.S.C. 103(a) “as being unpatentable over the combination of Itsuzaki et al. and Rowe et al. as applied to claim 1 above, and further in view of Watson et al. and Schemmel et al. (US 6,175,646).”

Applicant respectfully traverses the subject rejection. Claim 10 depends from claim 1. Claim 1 is patentable over the combination of Itsuzaki et al. and Rowe et al. for at least the reasons discussed above. Watson et al. and Schemmel et al. fail to cure all of the deficiencies of Itsuzaki et al. and Rowe et al. with respect to claim 1. The deficiencies of Watson et al. are discussed above. Schemmel et al. discloses a method and apparatus for detecting defects on silicon dies on a silicon wafer. This technical field is completely different from the present invention and needs equipment completely different from the present apparatus. Consequently, a person of ordinary skill in the art would not have looked to this document to explore how to measure the quality of body fluid samples. Therefore, based at least on its dependency from claim 1, claim 10 is patentable over the applied combination of references.

Accordingly, for at least the above reasons, the subject rejection should be withdrawn.

Claim 15 stands rejected under 35 U.S.C. 103(a) “as being unpatentable over the combination of Itsuzaki et al. and Rowe et al. as applied to claim 1 above, and further in view of Minden (US 6,342,143).”

Applicant respectfully traverses the subject rejection. Claim 15 depends from claim 1. Claim 1 is patentable over the combination of Itsuzaki et al. and Rowe et al. for at least the reasons discussed above. Minden fails to cure all of the deficiencies of Itsuzaki et al. and Rowe et al. with respect to claim 1. This is, in part, because Minden discloses a sample retrieval method and apparatus comprising cutting members, i.e., for use with solid samples. The imager referred to by the Patent Office is used for cutting out the sample from its carrier (see column 2, lines 39 to 56). This apparatus has nothing in common with the method and apparatus according to the present invention. Therefore, based at least on its dependency from claim 1, claim 15 is patentable over the applied combination of references.

Accordingly, for at least the above reasons, the subject rejection should be withdrawn.

Claims 20, 24 and 27 stand rejected under 35 U.S.C. 103(a) “as being unpatentable over the combination of Itsuzaki et al. and Rowe et al. as applied to claim 1 above, and further in view of Hsu (US 5,640,468).”

Applicant respectfully traverses the subject rejection. Claims 20, 24 and 27 depend from claim 1. Claim 1 is patentable over the combination of Itsuzaki et al. and Rowe et al. for at least the reasons discussed above. Hsu fails to cure all of the deficiencies of Itsuzaki et al. and Rowe et al. with respect to claim 1. This is, in part, because Hsu discloses a geographical information system processor including geographical data. This technical field is completely different from the present

invention and needs equipment completely different from the present apparatus. Consequently, a person of ordinary skill in the art would not have looked to this document in order to explore how to measure the quality of body fluid samples. Therefore, based at least on their respective dependencies from claim 1, claims 20, 24 and 27 are patentable over the applied combination of references.

Accordingly, for at least the above reasons, the subject rejection should be withdrawn.

Claim 22 stand rejected under 35 U.S.C. 103(a) “as being unpatentable over the combination of Itsuzaki et al. and Rowe et al. as applied to claim 1 above, and further in view of Yamazaki et al. (US 5,880,835).”

Applicant respectfully traverses the subject rejection. Claim 22 depends from claim 1. Claim 1 is patentable over the combination of Itsuzaki et al. and Rowe et al. for at least the reasons discussed above. Yamazaki et al. fails to cure all of the deficiencies of Itsuzaki et al. and Rowe et al. with respect to claim 1. This is, in part, because Yamazaki et al. discloses a method and apparatus for investigating particles in a fluid flowing in a flow cell, comprising a particle detector. This method and apparatus is not suitable for measuring the quality of a non-flowing body fluid located in a container. Therefore, based at least on its dependency from claim 1, claim 22 is patentable over the applied combination of references.

Accordingly, for at least the above reasons, the subject rejection should be withdrawn.

Claim 23 stand rejected under 35 U.S.C. 103(a) “as being unpatentable over the combination of Itsuzaki et al., Rowe et al. and Hsu as applied to claim 20 above, and further in view of Watson et al.”

Applicant respectfully traverses the subject rejection. Claim 23 depends from claim 20. Claim 20 is patentable over Itsuzaki et al., Rowe et al. and Hsu for at least the reasons given above.

Watson, which is discussed above, fails to cure all of the deficiencies of Itsuzaki et al., Rowe et al. and Hsu with respect to claim 20. Therefore, based at least on its dependency from claim 20, claim 23 is patentable over the applied combination of references.

Accordingly, for at least the above reasons, the subject rejection should be withdrawn.

Claim 26 stand rejected under 35 U.S.C. 103(a) “as being unpatentable over the combination of Itsuzaki et al., Rowe et al. and Hsu as applied to claim 24 above, and further in view of Bills (US 6,366,319).”

Applicant respectfully traverses the subject rejection. Claim 26 has been amended herein to depend from claim 25. Claim 25 is patentable over Itsuzaki et al. and Rowe et al. for at least the reasons given above. Hsu and Bills fail to cure all of the deficiencies of Itsuzaki et al. and Rowe et al. with respect to claim 25. Hsu is discussed above. Bills discloses a system for digital color imaging used in digital video cameras in order to replace conventional film cameras. Bills does not disclose a method and apparatus to measure the quality of body fluids. Therefore, based at least on its dependency from claim 25, claim 26 is patentable over the applied combination of references.

Accordingly, for at least the above reasons, the subject rejection should be withdrawn.

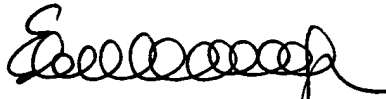
In conclusion, it is respectfully submitted that the present application is now in condition for allowance. Prompt and favorable action is earnestly solicited.

If there are any fees due in connection with the filing of this paper that are not accounted for, the Examiner is authorized to charge the fees to our Deposit Account No. 11-1755. If a fee is

required for an extension of time under 37 C.F.R. 1.136 that is not accounted for already, such an extension of time is requested and the fee should also be charged to our Deposit Account.


Respectfully submitted,

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I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Mail Stop RCE, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on August 3, 2009

  
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